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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/045,681 03/23/98 MITSUTAKE H 35.C10499CON

005514 MMC1/0717
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EXAMINER

GERIKE.M

ART UNIT	PAPER NUMBER
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2879

DATE MAILED: 07/17/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/045,681

Applicant(s)
Hideaki Mitsutake, et al.

Examiner
Matthew Gerike

Group Art Unit
2879



☒ Responsive to communication(s) filed on Mar 31, 1900

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 57, 58, and 60-63 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 57, 58, and 60-63 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Response to Applicants Arguments/Comments

Applicant's arguments filed 5/31/00 have been fully considered but they are not persuasive. The attorney of record has pointed out in the newly amended independent claim 57 that, "said spacer being in electrical contact with only one of said row directed or column directed wires" is distinct from the cited art. The examiner disagrees with the attorney's arguments.

The examiner states that the spacer of the cited art is inherently electrically connected to only one of said row directed or column directed wires. If on the other hand the spacer of the cited art was electrically connected to both the row directed wires and the column directed wires then a short circuit would have been created and the apparatus would be inoperable. This not being the case the spacer of the cited art is inherently electrically connected to only one of said row directed or column directed wires.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 57, 58 and 60-63 are rejected under the judicially created doctrine of double patenting over claims 1-38 of U. S. Patent No. 5,594,296 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: Both patent and application describe an electron beam apparatus with a vacuum envelope containing a plurality of electron-emitting devices, a plurality of row- and column-directed wires, a semiconductor coated spacer plate electrically connected to either one of or both of the column or row electrodes, and a target.

The following table shows the common subject matter of the application and patent.

Application 09/045,681	Patent #5,594,296	Discussion of Differences
Claim 57	Figure 22; column 22, lines 24-32, "conductive film" and column 9, lines 30-43, #73 Y-wiring.	No differences, same subject matter
Claim 58	Figure 22, #171, #72 X-wiring	No differences, same subject matter

Application 09/045,681	Patent #5,594,296	Discussion of Differences
Claim 60	Figure 22, #171 spacer with conductive film on surface, column 22, lines 24-32: conductive film column 9, lines 30-43 a semiconductor	No differences, same subject matter
Claim 61	target=fluorescent film #88	No differences, same subject matter
Claim 62	spacer connected to #9 shielding members being electrically connected to other spacers being connected to other X-wiring members	No differences, same subject matter
Claim 63	column 11, lines 7-17	No differences, same subject matter

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Other Prior Art Cited

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sato et al. (U.S. 5,952,775), Mitsutake et al. (U.S. 5,760,538), Tagawa et al. (U.S. 5,734,224), Mori et al. (U.S. 5,247,223), Suzuki et al. (U.S. 5,155,416), Longo et al. (U.S. 5,063,323) and Suzuki et al. (U.S. 4,954,744).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Gerike whose telephone number is (703) 308-8991. The examiner can normally be reached on Monday - Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nimeshkumar Patel, can be reached on (703) 305-4794. The fax phone number for this Group is (703) 305-3594.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.



Matthew J. Gerike
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Art Unit 2879



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